

## **REMARKS**

Applicant has fully considered the Non-Final Office Action mailed February 13, 2007, and respectfully requests reconsideration of the application.

The Examiner withdrew all of the previous rejections in view of Applicant's arguments presented in the response filed December 19, 2006. The Examiner sets forth new grounds for the rejections. Claims 1-16 are pending in the application. Claims 1-16 have been rejected.

Claim 1 is amended to delete the term "material" in line 10 and insert the word "elements" such that lines 9 and 10 read "the backing layer of the release tape entirely covers the mechanical fastener elements..." This is consistent with line 6 of claim 1, which uses the phrase "mechanical fastening elements."

### **Rejections Under 35 U.S.C. §102(e)**

The Examiner rejected claims 1-5, 12, and 14-16 under 35 U.S.C. §102(e) as being anticipated by Richter et al. (U.S. Patent No. 6,363,587). Applicant respectfully traverses this rejection.

#### **A. Evolution of Rejections Based on Richter**

Initially, the Examiner acknowledged that Richter fails to disclose the backing layer of the release tape entirely covering the mechanical fastener material of the fastening tape, and claims 1-5, 12, and 14-16 were rejected under 35 U.S.C. 103(a) based on Richter in view of Kato. (See, e.g., Office Action, November 3, 2005, page 3.) The Examiner withdrew those rejections based on Applicant's arguments presented in an Appeal Brief filed on July 26, 2006. (See Office Action, September 25, 2006.)

In the Office Action mailed on September 25, 2006, however, the Examiner rejected the claims under 35 U.S.C. 102(e) as being anticipated by Richter. The Examiner argued that Richter did teach the backing layer of the release tape entirely covering the mechanical fastener material of the fastening tape. In particular, the Examiner stated that Richter's release tab (35) having backing layer (47) and adhesive (44) respectively correspond to the release tape

comprising a backing layer and the adhesive layer set forth in claim 1. The Examiner contended that Richter taught this feature at Column 5, lines 11-12 and in Fig. 2, which allegedly shows the mechanical fastener being covered by the backing layer of the next layer of tab tape in roll form. In the Response filed December 19, 2006, Applicant demonstrated that to disclose a tape as set forth in the claims, the backing layer (47) of Richter's tab (35) should cover the mechanical fastener material, and that Richter fails to teach or suggest such a construction. Rather, Richter's release tab is adjacent the mechanical fastener material. Consequently, Richter fails to disclose the backing layer of the release tape completely covering the mechanical fastener material.

In the Office Action mailed February 13, 2007, the Examiner withdrew the previous rejections but has again changed her position about what Richter teaches. The Examiner now contends that (i) the backing layer (33) and adhesive layer (36) of Richter, rather than backing layer (47) and adhesive (44) of tab (35), correspond to the backing layer and adhesive layer, respectively, of the release tape in claim 1, and (ii) Fig. 2 shows the backing layer of the release tape entirely covers the mechanical fastener when in roll form.

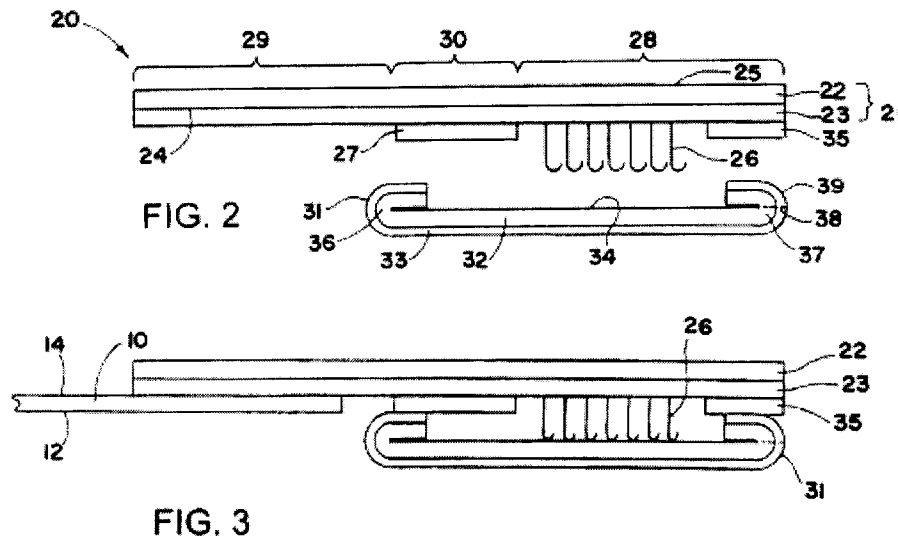
For the reasons set forth below, Applicant respectfully disagrees with the Examiner's position and submits that Richter does not anticipate the claims.

## **B. Richter Fails to Anticipate the Claims**

A reference fails to anticipate a claim unless it teaches each and every element as set forth in the claim. (M.P.E.P. 2131.) In particular, the reference must show the identical invention in as complete detail as set forth in the claim. (Id.) That is, the elements in the reference must be arranged as required by the claim. (Id.)

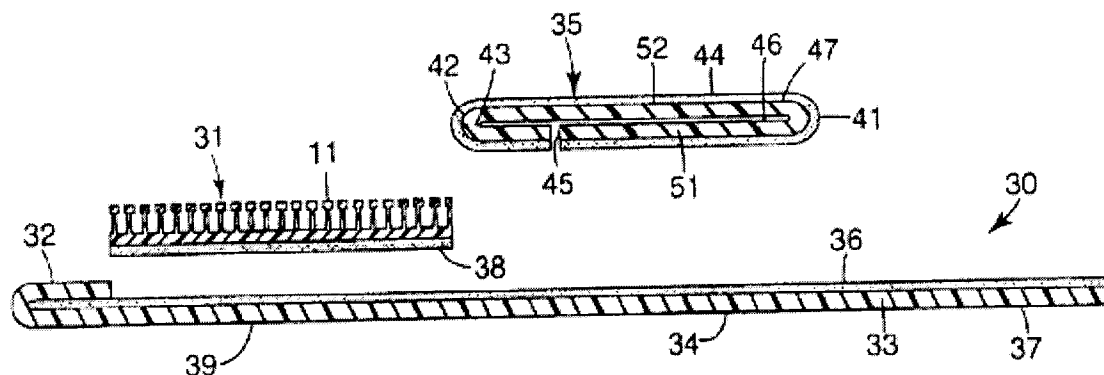
Claim 1 recites a composite tape from which a closure tab (20) can be cut. The closure tab comprises a fastening tape (21) comprising (a) a backing film (22) having a bonding extension section (29) and an engaging extension section (28), wherein the bonding section (29) attaches the fastening tape to a disposable absorbent article, and (b) mechanical fastening elements (26)

projecting from the backing film (22) at the engaging extension section. Claim 1 further recites that the tape comprises a release tape (31) comprising a backing layer (32) and an adhesive layer (33), wherein the backing layer (32) of the release tape (31) entirely covers the mechanical fastener material of the fastening tape and wherein the fastening tape is releasably attached to the release tape. (See, e.g., Figs. 2 and 3 below.)<sup>1</sup> That is, claim 1 requires a structure other than the fastening tape itself to cover the fastener material.

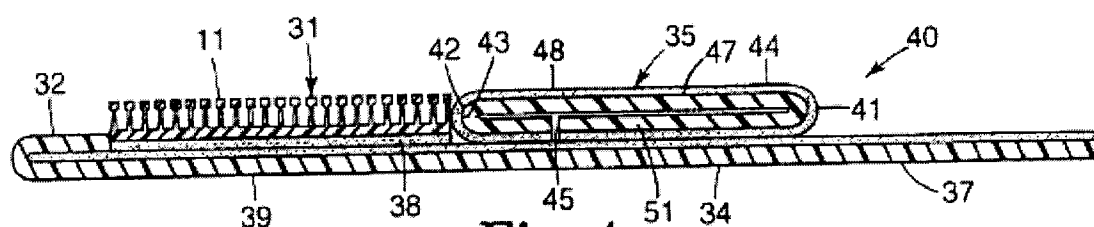


Richter teaches a mechanical fastener tape tab element comprising a tape tab backing (33) provided with a pressure-sensitive adhesive layer (36) that allows for attachment of a mechanical fastener material (31) and release tab (35). The tape tab backing (33) is separated into three distinct portions along its length – a first distal end portion (37), an inner tab portion (34), and a second distal end portion (39). The release tab (35) is positioned along the inner tab portion (see Fig. 4). A mechanical fastener is adhered to second distal end portion (39) of the backing tape. The mechanical fastener tape tab laminate of Richter allows the tab to remain in a folded condition around the edge of a diaper prior to use. (See Figs. 3 and 4 from Richter.)

<sup>1</sup> Figs. 2 and 3 are referred to only for illustrative purposes and should not be construed as limiting the scope of claim 1.



**Fig. 3**



**Fig. 4**

Richter discloses a release tab (35) having a backing layer (47) and an adhesive layer (44). Richter, however, fails to disclose that the backing layer of the release tab (35) entirely covers the mechanical fastener material of the fastening tape. Rather, Richter only discloses that release tab (35) is positioned adjacent to the mechanical fastener along the inner tab portion (34). (See, e.g., '587 patent, col. 5, lines 27-41, and Figs. 3-6, 8-11, and 13.) Therefore, the elements disclosed in Richter are not arranged as required by the present claims. Further, there is simply no teaching or suggestion to reconfigure or move Richter's release tab such that backing (47) entirely covers mechanical fastener (11). Consequently, Richter fails to anticipate the claims.

Even if the Examiner's most recent interpretation of Richter were correct, Richter still fails to teach or suggest all the claimed elements arranged in the manner required by claim 1. As discussed above, the Examiner now contends that the backing layer (33) and adhesive layer (36) of Richter correspond to the backing layer and adhesive layer, respectively, of the release tape in claim 1, and that Fig. 2 shows the backing layer of the release tape entirely covers the

mechanical fastener when in roll form. The Examiner also contends that items (33) and (36) in Richter correspond to the backing film and fastening surface, respectively, of the fastening tape. That is, the Examiner contends that items (33) and (36) in Richter correspond to both (i) the backing film and fastening surface, respectively, of the fastening tape, and (ii) the backing layer and adhesive layer, respectively, of a release tape as recited in claim 1. From this, the Examiner contends that Fig. 2 of Richter shows that the backing layer (33) of the release tape (36) entirely covers the mechanical fasteners of the fastening tape and the fastening tape being releasably attached to the release tape.

Irrespective of what elements the Examiner selects, Richter still fails to teach a composite tape with all the elements arranged in a manner as required by claim 1. Again, claim 1 recites that the backing layer of the release tape entirely covers the mechanical fastener material. If, for example, the tape in Fig. 2 of Applicant's disclosure were rolled about an axis parallel with closure tape (20), the release tape (31) would be disposed between the mechanical fastener material and the fastening tape's backing film. When Richter's tape is rolled, the release tab (35) and backing layer (47) of release tab (35) are still adjacent the hooks (11). That is, the backing layer (47) of Richter's release tab (35) does not cover the mechanical fastener material. Even if Richter's tape tab backing (33) may be adjacent the fasteners in roll form, Richter completely fails to teach or suggest a structure such as a release tape that (i) is distinct from the fastening tape itself, and (ii) entirely covers the mechanical fastening material on the fastening tape as recited by claim 1. Thus, even in roll form, Richter fails to disclose a tape having all the features arranged as required by claim 1.

The above discussion confirms what the Examiner previously acknowledged – Richter fails to disclose a backing layer of a release tape entirely covering the mechanical fastener material of the fastening tape. Consequently, Richter fails to anticipate claim 1 and any claim dependent therefrom. Applicant respectfully requests that the rejection of claims 1-5, 12, and 14-16 under 35 U.S.C. §102(e) be withdrawn.

**Rejections under 35 U.S.C. §103(a)**

The Examiner rejected claims 6-11 and 13 under 35 U.S.C. §103(a) as being unpatentable over Richter et al. in view of certain other references. The individual rejections are discussed below, but Applicant submits that the claimed invention would not have been obvious in view of Richter in combination with any of the secondary references.

In order to establish a prima facie case of obviousness, there must be (1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one skilled in the art, to modify the reference or to combine reference teachings, and (2) a reasonable expectation of success. (MPEP § 2143.) Further, the prior art references must teach or suggest all the claim limitations. (Id., MPEP § 2143.03.) Neither Richter, nor any of the secondary references teach or suggest a release tape wherein the backing layer of the release tape entirely covers the mechanical fastener material.

**Claims 6, 7, and 9-11 are rejected under 35 U.S.C. §103(a)**

The Examiner rejected claims 6, 7, and 9-11 under 35 U.S.C. §103(a) as being unpatentable over Richter et al. in view of Alberg et al. (U.S. Patent No. 6,526,631). Applicant respectfully traverses this rejection.

As previously discussed, Richter fails to teach or suggest a release tape that completely covers the mechanical fastener material of the fastening tape. Alberg also teaches a mechanical fastener tape tab laminate in which the mechanical fastener remains exposed to the inner surface of the diaper. The Examiner merely relies on Alberg for the disclosure of an intermediate section that is extensible, and at least one of the backing film and the backing layer comprising a non-woven polymeric film, an extensible composite, or a textile. Alberg, however, fails to make up for the deficiencies in Richter. Therefore, the combination of Richter and Alberg fails to teach or suggest all of the claim limitations. Consequently, claims 6-7 and 9-11 are not obvious in view of Richter in combination with Alberg. Applicant respectfully requests that the rejection be withdrawn.

**Claim 8 is rejected under 35 U.S.C. §103(a)**

The Examiner rejected claim 8 under 35 U.S.C. §103(a) as being unpatentable over Richter et al. in view of Pape et al. (U.S. Patent No. 4,726,971). Applicant respectfully traverses this rejection.

The Examiner relies on Pape for teaching a composite tape forming closure tapes for disposable articles having at least one of the backing film and backing layer comprising paper and for the purpose of forming closures for disposable diapers. Pape, however, fails to cure the deficiencies in Richter. As such, the combination of Richter and Pape fail to teach a composite tape wherein the release tape entirely covers the mechanical fastener of the fastening tape. Therefore, the combination of Richter and Pape fails to teach or suggest all the claim limitations, and fails to render the claims obvious. Applicant respectfully requests that the rejection of claim 8 based on the combination of Richter and Pape be withdrawn.

**Claim 13 is rejected under 35 U.S.C. §103(a)**

The Examiner rejected claim 13 under 35 U.S.C. §103(a) as being unpatentable over Richter et al. in view of Borgers et al. (U.S. Patent No. 4,795,456). Applicant respectfully traverses this rejection.

The Examiner relies on Borgers for teaching a composite tape forming closure tabs for disposable articles where the bonding section is welded to the disposable absorbent article for the purpose of forming a tab that provides stabilizing means for preventing premature extension of an extensible diaper tab. Borgers also fails to cure the deficiencies in Richter. Therefore, the combination of Richter and Borgers fails to teach a composite tape wherein the release tape entirely covers the mechanical fastener of the fastening tape. Because the combination of Richter and Borgers fails to teach every limitation in the claim, the combination fails to render the claims obvious. Applicant respectfully requests that the rejection of claim 13 be withdrawn.

### **CONCLUSION**

In view of the foregoing remarks, Applicant respectfully request reconsideration and a timely issuance of a notice of allowance for claims 1-16.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 18-0988 under Attorney Docket No. **AVERP3435USA**.

Respectfully submitted,

RENNER, OTTO, BOISSELLE & SKLAR, LLP

By: /Heidi A. Boehlefeld  
Heidi A. Boehlefeld  
Reg. No. 34,296

1621 Euclid Avenue  
19<sup>th</sup> Floor  
Cleveland, Ohio 44115-2191  
(216) 621-1113